DETAILED ACTION

Applicant's arguments filed 7/29/11 have been fully considered but they are not persuasive. See argument below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-4,9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hofer et al. (US 6875727;4/5/05). Hofer et al. teach a method of using macrolides to control pests (abstract). Hofer et al. teach that numerous actives including cafentrazone-ethyl can be added to the macrolides (column 76 line 51) . Hofer et al. suggest a method of applying a composition comprising macrolides and carfentrazone-ethyl to plant propagation material such as seedlings and seeds (loci). See column 110 line 49 – column 111 line 15. Hofer et al. teach that the propagation material is that of stone fruit such as plums and vines such as grapevines (column 110 line 49 – column 111 line 15, column 121 lines 24-40). Hofer et al. do not exemplify a method of applying macrolides plus carfentrazone-ethyl to stone fruit or vine seeds or seedlings. However, this would have been obvious since the prior suggests treating said propagation of plums and vines with carfentrazone-ethyl. Thus, Hofer et al. make instant method obvious. With respect to the amount of carfentrance-ethyl used, it is obvious to optimize

amounts to determine the concentration effective at controlling unwanted vegetation without destroying desirable plant growth.

Response to Applicants' Argument

The Applicants argue that the Examiner failed to provide any prior art that suggest treating said propagation of plums and vines with carfentrazone-ethyl. Applicants argue that Hofer et al. are drawn to the use of macrolides to control pests. The addition of carfentrazone-ethyl is one of many actives that can be combined with the claimed macrolides in Hofer et al. Hofer et al. do not teach or suggest the application of about 12 g/hl to about 36 g/hl of carfentrazone-ethyl to a locus where ground shoots are growing. The Examiner argues that although Hofer et al. do not exemplify a method of applying carfentrazone-ethyl to a locus where ground shoots are growing, Hofer et al. do suggest that other actives including carfentrazone-ethyl can be combined with macrolides and that the macrolide containing composition can be applied to the propagation materials of stone fruit such as plums and grapevines. Naturally, such an application would obviously result in the control of unwanted ground shoots of vines and stone fruit trees since the active application step in Hofer et al. is the same as the active step employed in the instant claims, lacking only the instantly claimed range amount of carfentrazone-ethyl to be applied. The Examiner points out that absent a showing of unexpected results for the instantly claimed range amount of carfentrazone-ethyl, Hofer et al. make obvious the instant amount of carfentrazone-ethyl. Note, it is obvious to determine the optimum amount of active through routine experimentation. Thus, Hofer et al. make obvious the instant invention.

Claims 1,2,9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bieringer et al. (WO 0128341; 4/26/01 in view of English Equivalent USPN 7056863; 6/6/06). Bieringer et al. suggest a composition comprising hydroxyphenylpyruvate plus carfentrazone-ethyl (abstract, column 9 lines 14-27). Bieringer et al. teach a method of applying the composition to harmful plants or parts thereof to control their growth in crops, including the composition's application in viticulture (column 11 lines 41-67). Bieringer et al. do not exemplify a method of applying hydroxyphenylpyruvate plus carfentrazone-ethyl in viticulture application. However, this would have been obvious since the prior suggests using carfentrazone-ethyl in viticulture. Thus, Bieringer et al. make instant method obvious. With respect to the amount of carfentrance-ethyl used, it is obvious to optimize amounts to determine the concentration effective at controlling unwanted vegetation without destroying desirable plant growth.

Response to Applicants' Argument

The Applicants argue that the Examiner failed to provide any prior art that suggest treating plants or plants thereof with carfentrazone-ethyl. Applicants argue that Bieringer et al. are drawn to the use of hydroxyphenylpyruvate with additional herbicides. The addition of carfentrazone-ethyl is one of many actives that can be combined with the claimed hydroxyphenylpyruvate in Bieringer et al. Bieringer et al. do not teach or suggest the application of about 12 g/hl to about 36 g/hl of carfentrazone-ethyl to a locus where ground shoots are growing. The Examiner argues that although Bieringer et al. do not exemplify a method of applying carfentrazone-ethyl to a locus where ground shoots are growing, Bieringer et al. do suggest that other actives

including carfentrazone-ethyl can be combined with hydroxyphenylpyruvate and that the hydroxyphenylpyruvate containing composition can be applied to viticulture. Naturally, such an application would obviously result in the control of unwanted ground shoots viticulture since the active application step in Bieringer et al. is the same as the active step employed in the instant claims, lacking only the instantly claimed range amount of carfentrazone-ethyl to be applied. The Examiner points out that absent a showing of unexpected results for the instantly claimed range amount of carfentrazone-ethyl, Bieringer et al. make obvious the instant amount of carfentrazone-ethyl. Note, it is obvious to determine the optimum amount of active through routine experimentation. Thus, Bieringer et al. make obvious the instant invention.

Claims 1,2,9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hacker et al. (WO 03407340; 6/12/03 in view of English Equivalent USAN 20030158040; 8/21/03). Hacker et al. suggest a composition comprising carfentrazone-ethyl (abstract27). Hacker et al. teach a method of applying the composition to harmful plants or parts thereof to control their growth in crops, including the composition's application in viticulture (paragraphs 39,73). Hacker et al. do not exemplify a method of applying carfentrazone-ethyl in viticulture application. However, this would have been obvious since the prior suggests using carfentrazone-ethyl in viticulture. Thus, Hacker et al. make instant method obvious. With respect to the amount of carfentrance-ethyl used, it is obvious to optimize amounts to determine the concentration effective at controlling unwanted vegetation without destroying desirable plant growth.

Response to Applicants' Argument

The Applicants argue that the Examiner failed to provide any prior art that suggest treating plants or plants thereof with carfentrazone-ethyl. Applicants argue that Hacker et al. are drawn to the use of 2-[2-chloro-3-(2,2,2-trifluoroethoxymethyl)-4-methylsulfonylbenzoyl] cyclohexane-1,3-dione with additional herbicides. The addition of carfentrazone-ethyl is one of many actives that can be combined with the claimed 2-[2-chloro-3-(2,2,2-trifluoroethoxymethyl)-4-methylsulfonylbenzoyl] cyclohexane-1,3-dione in Hacker et al. Hacker et al. do not teach or suggest the application of about 12 g/hl to about 36 g/hl of carfentrazone-ethyl to a locus where ground shoots are growing. The Examiner argues that although Hacker et al. do not exemplify a method of applying carfentrazone-ethyl to a locus where ground shoots are growing, Hacker et al. do suggest that other actives including carfentrazone-ethyl can be combined with 2-[2-chloro-3-(2,2,2-trifluoroethoxymethyl)-4-methylsulfonylbenzoyl] cyclohexane-1,3-dione and that the 2-[2-chloro-3-(2,2,2-trifluoroethoxymethyl)-4-methylsulfonylbenzoyl] cyclohexane-1,3-dione containing composition can be applied to viticulture. Naturally, such an application would obviously result in the control of unwanted ground shoots viticulture since the active application step in Hacker et al. is the same as the active step employed in the instant claims, lacking only the instantly claimed range amount of carfentrazone-ethyl to be applied. The Examiner points out that absent a showing of unexpected results for the instantly claimed range amount of carfentrazone-ethyl, Hacker et al. make obvious the instant amount of carfentrazone-ethyl. Note, it is obvious to determine the optimum amount of active through routine experimentation. Thus, Hacker et al. make obvious the instant invention.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALTON N. PRYOR whose telephone number is (571)272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alton N. Pryor/
Primary Examiner, Art Unit 1616